



UNITED STATES MARINE CORPS
MARINE CORPS EDUCATION COMMAND
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MARINE CORPS UNIVERSITY POLICY LETTER 4-03

From: President, Marine Corps University/Commanding General,
Education Command
To: Distribution List

Subj: MARINE CORPS UNIVERSITY FACULTY, STAFF, AND STUDENT
COPYRIGHT POLICY

Ref: (a) Title 17, United States Code, Copyright Act of 1976
(b) SECNAVINST 5870.6, Copyright in Works of Authorship
Prepared by Department of the Navy Personnel, 8
September 1988.
(c) Standards of Ethical Conduct for Employees of the
Executive Branch, 5 C.F.R., Section 2635.807.

1. Purpose. This policy outlines the statutes and regulations regarding faculty copyrights, describes those materials that are works of the government and cannot be copyrighted, and describes the ability of staff, faculty and students to secure copyrights in materials that are not works of the government.

2. Cancellation. MCU Policy Letter 1-02, dated 30 January 2002.

3. Background

a. As noted in reference (a), section 102 of Title 17 states that, "Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression . . . [to] include . . . literary works."

b. However, Section 105 of Title 17 limits the broad grant of protection and states that, "Copyright protection under this title is not available for any work of the United States Government." Section 101 defines a "work of the United States Government" as "work prepared by an officer or employee of the United States Government as part of that person's official duties."

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4. Policy

a. Works of the government

(1) Any materials prepared as part of official duties are a work of the government. Materials originally produced as part of official duties cannot simply be "re-packaged" or "re-merchandised." They will still be treated as works of the government.

(2) No copyright can exist for such material for purposes of either use of the author or assignment to a publisher. Therefore, neither an author nor the government may receive compensation for the right to reproduce or publish materials classified as works of the government.

(3) Reference (b) offers the following general criteria when determining if works are prepared as part of official duties:

(a) Preparation of the work was within the employee's position, job or billet description. This includes a work properly self-assigned by the employee who was in a position to do so.

(b) Preparation of the work was properly assigned by the employee's supervisor.

b. Works owned by the author

(1) Any materials prepared by a government employee not as a part of that person's official duties belong to the author, and the author can receive copyright protection and usually reap any associated revenues for such material.

(2) A book or article written on a subject that the author is currently teaching or researching may receive copyright protection as long as the book or article was not the product of official duties (assigned or implied). The MCU hires instructors for their subject matter expertise, and they may use that expertise for their own benefit, as well as that of the government, in accordance with established guidelines and reference (c).

(a) Reference (b), paragraph 5.b states: "The fact (or absence of the fact) that there was a Government contribution in the preparation of the work is not, in and of itself, determinative of whether the work was prepared as part of official duties. (Examples of 'Government contributions' are use

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of Government time, facilities, equipment, materials, funds, or the services of other Government employees on official duty.)"

(b) Paragraph 5c of reference (b) further states:
"An employee is not prevented from asserting a copyright in a work prepared at that person's own volition and clearly outside his or her official duties, even though the work includes knowledge or information derived from the employee's official duties or relates to the professional field of the employee."

(3) The essential test is whether the work is at the author's *own initiative*, not at the government's behest.

c. The production of articles and manuscripts is fully supported and encouraged by MCU. Nevertheless, the primary mission of MCU is to develop and guide the future leaders of the military. Potential authors must take care not to detract from this central mission.

5. Responsibilities. All MCU staff, faculty, and students must adhere to the guidance in this policy when making copyright determinations or when seeking copyright protection and before submitting articles/materials for copyrighted publication.



T. A. BENES

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